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CONNOLLY BOVE LODGE & HUTZ LLP			KIM, STEVEN S	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/551,921	LECOMTE, DANIEL
	Examiner	Art Unit
	STEVEN KIM	3685

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 February 2009.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 21-30,32,33 and 36-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 21-30,32,33 and 36-44 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. This office action is in response to Applicant's amendments filed on 2/16/2009, hereinafter referred to as "Amend0209". The amendment addressed non-compliance on the amended claims submitted on 1/9/2009. Claims 21-28, 30, 32, and 36-37 have been amended. Claims 1-20, 31, and 34-35 have been cancelled. Claims 41-44 have been newly added. Accordingly, claims 21-30, 32-33, and 36-44 are pending.

Response to Arguments/Amendments

2. Applicant's arguments filed on 1/9/2009 have been fully considered but they are not persuasive.

3. Objection to drawings
The amendment to the drawings 1/9/2009 has been acknowledged. The objection is withdrawn accordingly.

4. Claim Rejections under 35 USC § 101
Applicant's argument is moot due to amendment.

5. Claim Rejections under 35 USC § 101
Applicant's argument is moot due to amendment.

6. Claim Rejections under 35 USC § 103

7. The Applicant asserts that prior art fail to disclose or suggest “content-related aspects” of the instant invention, specifically modified main stream that cannot be used on standard video reading equipment, that Dawson, prior art, which discloses marred video and that marred video is **not rendered such that it cannot be read** (see Amendment 1/9/2009, page 10, paragraph 5 - page 11, paragraph 1). However, the claim does not recite “not rendered such that it (modified main stream) cannot be read”. Rather the claim recites “cannot be used”. Dawson discloses splitting of stream into two parts, marred content and extracted video. The marred content and the extracted video are necessary to eliminate the marred image (see Figure 3A - Figure 4C; Figure 6A; col. 2, lines 15-28). “Marred” is defined as “to injure or damage so as to make imperfect, less attractive, etc; spoil; impair; disfigure” in Webster’s New World Dictionary, Second College Edition, 1980. Therefore, if a stream, i.e. picture, is marred, then the stream cannot be used since it is “injured or damaged”. Furthermore, the Applicant is directed to the specification of the instant application paragraph 0023 that describes, “Modified main stream 101 has the same format as entering stream 10 but has undergone modifications to certain parameters. The modified main stream can therefore be read on a standard reader of this format, but displaying the corresponding audiovisual content is not correct from the standpoint of human perception.” For the reasons outlined above, the prior clearly discloses “the modified main stream (that) cannot be used on standard video reading equipment” as recited in the independent claims 21 and 36.

8. Amendments

9. The Applicant has amended the independent claims, claims 1 and 36, to correspond to the portions of the process/system for preparing and distributing the video products. The Applicant has amended claims 22-28, 30, 32, and 37 and newly added claims 41-44.

10. The Applicant asserts that each of the amendments and new claims are supported by the application as originally filed. The Examiner respectfully disagrees. For example, claims 21 and 36 have been amended to recite “a smaller part of which is retained in a publicly accessible server within complementary digital information personalized for each user and complementary to the modified main stream” is not disclosed in the written description. Furthermore, the claims have been amended to recite “wherein the modified main stream cannot be used on standard **video** reading equipment” which is not disclosed in the written description. Similarly, limitations in claims 44 and 27 are not disclosed in the written description. Additionally, claim 38 recite “wherein the distribution equipment and the server are locally interconnected without a link via a telecommunication network”. This limitation is not disclosed in the written description. As such, claims 21-30, 32-33, and 36-44 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The Applicant is advised to review the amendments and the new claims in its entirety and disclose support in the written description.

11. Moreover, the amendments render the claims to be indefinite under 35 USC 112, second paragraph (see infra for examples). Hence, claims 21-30, 32-33, and 36-44 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph. The Applicant is advised to review the claims in its entirety for appropriate action(s).

12. Furthermore, the amendments necessitate 35 USC § 101 rejections on claims 21-23, 25-30, 32-33, and 43-44. Based on Supreme Court precedent (See also Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780, 787-88 (1876)) and recent Federal Circuit decisions, a §101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In addition, the tie to a particular apparatus, for example, cannot be mere extra-solution activity. See *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008). An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. To meet prong (1), the method step should positively recite the other statutory class (the thing or product) to which it is tied. This may be accomplished by having the claim positively recite the machine that accomplishes the method steps. Alternatively or to meet prong (2), the method step should positively recite identifying the material that is being changed to a different state or positively recite the subject matter that is being transformed.

In this particular case, claims 21-23, 25-30, 32-33, and 43-44 fail prong (1) because the “tie” (e.g. producing, distributing) is representative of extra-solution activity. Additionally, the claim(s) fail prong (2) because the method steps do not transform the underlying subject matter to a different state or thing.

13. Prior art clearly teach process/system for preparing and distributing the video products. Ginter discloses a process for distributing digital video products with a restriction of at least certain rights of representation and reproduction (see col. 1, lines 16-30), comprising: forming a bank of original digital video sequences on a publicly inaccessible server for each request made by a user (see Fig. 2; col. 2, lines 19-32; col. 6, lines 55-63, col. 22, lines 26-55), selecting by the user of one or several sequences of the video bank (see Fig. 2; col. 2, lines 19-32; col. 6, lines 55-63, col. 22, lines 26-55), transmitting the main stream modified at a distribution site (see Fig. 1 and Fig. 3), recording the modified main stream at the distribution site on a standardized support material (see col. 3; lines 22-26, delivery means including optical/magnetic disk, col. 6-21; col. 62, lines 31-50), and sending complementary digital information to the user during viewing of the modified main stream sent to the user on the material support supplied by the distributor (see col. 26, lines 10-43, use of clearinghouse to control the VDE activities; col. 309, lines 1-18, routing of information using two containers; col. 342, lines 21-35, use of two depositories).

14. While Ginter discloses a modification stage of packaging elements of content into a container (see col. 59, lines 7-67), Ginter does not explicitly disclose a modification

Art Unit: 3685

stage producing a modified main stream in a nominal format of a selected original video sequence, but whose content was modified by cutting into two parts, a larger part of which is recorded in the modified main stream that cannot be used on standard reading equipment, and a smaller part that is retained in the server within complementary digital information personalized for each user and complementary to the modified main stream.

15. However, Dawson discloses a modification stage producing a modified main stream in a nominal format of a selected original video sequence, but whose content was modified by cutting into two parts, a larger part of which is recorded in the modified main stream that cannot be used on standard reading equipment, and a smaller part that is retained in the server within complementary digital information personalized for each user and complementary to the modified main stream (see Figure 3A - Figure 4C; Figure 6A; col. 2, lines 15-28).

16. Ginter and Dawson are analogous art since they are from the same field of endeavor of protecting/controlling content usage. It would have been obvious to one of ordinary skill in the art to combine the teachings. The motivation for doing so would have been to allow flexible and additional layer of protecting the content usage.

17. Ginter further discloses a video server comprising a video bank and at least one piece of distribution equipment comprising a DVD burner (see Fig. 2; col. 2, lines 19-32; col. 6, lines 55-63, col. 22, lines 26-55; Fig. 7 - Fig. 10) .

18. Additionally, the amended claim language of "configured to" in a system claim(s) do not limit the claimed apparatus since it merely states the intended use rather than the structure of the system.

19. The newly added claims 41-44 correspond to elements removed from various claims as presented previously (see Applicant's remark in Amendment 1/9/2009, page 11, paragraph 3). Hence have been addressed previously.

20. For at least reasons outlined above, the prior art continue to read on claims 21-30, 32-33, and 36-44.

Claim Rejections - 35 USC § 101

21. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

22. Claims 21-23, 25-30, 32-33, and 43-44 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent (See also Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780, 787-88 (1876)) and recent Federal Circuit decisions, a §101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In addition, the tie to a particular apparatus, for example, cannot be mere extra-solution activity. See In re Bilski, 88 USPQ2d 1385 (Fed. Cir. 2008).

23. An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps.

24. To meet prong (1), the method step should positively recite the other statutory class (the thing or product) to which it is tied. This may be accomplished by having the claim positively recite the machine that accomplishes the method steps. Alternatively or to meet prong (2), the method step should positively recite identifying the material that is being changed to a different state or positively recite the subject matter that is being transformed.

25. In this particular case, claims 21-23, 25-30, 32-33, and 43-44 fail prong (1) because the “tie” (e.g. producing, distributing) is representative of extra-solution activity. Additionally, the claim(s) fail prong (2) because the method steps do not transform the underlying subject matter to a different state or thing.

Claim Rejections - 35 USC § 112

26. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

27. Claims 21-30, 32-33, and 36-44 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 21 and 36 have been amended to recite “a smaller part of which is retained in a publicly accessible server within complementary digital information personalized for each user and

Art Unit: 3685

complementary to the modified main stream” is not disclosed in the written description. Furthermore, the claims have been amended to recite “wherein the modified main stream cannot be used on standard **video** reading equipment” which is not disclosed in the written description. Similarly, limitations in claims 44 and 27 are not disclosed in the written description. Additionally, claim 38 recite “wherein the distribution equipment and the server are locally interconnected without a link via a telecommunication network”.

This limitation is not disclosed in the written description. Claims 22-30, 32-33, and 37-44 are rejected similarly as each depends on claims 21 or 36.

28. The Applicant is advised to review the amendments and the new claims in its entirety and disclose support in the written description.

29. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

30. Claims 21-30, 32-33, and 36-44 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

31. The claim(s) are narrative in form (see claim 21 and 36), replete with indefinite and functional or operational language, omit essential steps. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device.

Some of the examples include:

- omitting essential steps, e.g. claims 21 and 36 recite producing a modified main stream, however, does not recite modifying of main stream. Similarly,

the claims recite information personalized for each user but fail to recite positive step of personalizing digital information for each user.

- The claims recite “the video server” and “the server”. It is unclear whether the server is referring to "the video server" or a server other than the video server. The Applicant is advised to keep the same terminology throughout the claims if the terminology is intended to be same component.
- Claim 24 claims a system and a method (see claim 24 and claim 41 on which claim 24 depends), which renders the claim ambiguous. For examination purposes, the examiner will interpret (this/these) claim(s) as being directed to a system only.
- Claim 23 recites “identifying a distributor”, however, claim 22 which claim 23 depends also recites “a distributor”. It is unclear whether “a distributor” in claim 23 is a distributor other than a distributor recited in claim 22.
- Claim 24 recites the limitation "the support". There is insufficient antecedent basis for this limitation in the claim.
- Claim 27 recites “means of”. It is unclear whether the claim is invoking 35 USC 112, sixth paragraph. The Applicant is advised to change to "means for" if the intent is to invoke 35 USC 112, sixth paragraph.
- Claim 28 recites the limitation of “said modifying the original video sequence”. There is insufficient antecedent basis for this limitation in the claim.
- Further regards to claim 28, the limitation “processing specific to a distributor designated by the user in the user's selection” is indefinite. It is unclear what

processing specific is. Moreover, "by the user in the user's selection" is unclear.

- Claim 29 recites the limitation of "each specific processing". It is unclear what "each specific processing" refers to.
- Claim 29 recites "processing specific". It is unclear what specific is.
- Claims 37-42 recite "the distribution equipment" while the independent claim 36 on which claims 37-42 depend recites "at least one piece of distribution equipment".

32. An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed-In re Zletz,13 USPQ2d 1320 (Fed. Cir. 1989)

33. Above are few examples of that result indefiniteness and do not represent comprehensive listing. The Applicant is advised to review the claims in its entirety for appropriate action.

Claim Rejections - 35 USC § 103

34. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3685

35. Claims 21-30, 32-33, and 36-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,892,900 to Ginter et al., hereinafter referred to as "Ginter", in view of US Patent 7,382,969 to Dawson.

36. In regards to claims 21, 36-42, and 24, Ginter discloses a process for distributing digital video products with a restriction of at least certain rights of representation and reproduction (see col. 1, lines 16-30), comprising:

- an initial stage of forming a bank of original digital video sequences on a publicly inaccessible server for each request made by a user (see Fig. 2; col. 2, lines 19-32; col. 6, lines 55-63, col. 22, lines 26-55), and
- a stage of selection by the user of one or several sequences of the video bank (see Fig. 2; col. 2, lines 19-32; col. 6, lines 55-63, col. 22, lines 26-55), which selection stage activates
 - a stage for transmitting the main stream modified at a distribution site (see Fig. 1 and Fig. 3),
 - a stage for recording the modified main stream at the distribution site on a standardized support material (see col. 3; lines 22-26, delivery means including optical/magnetic disk, col. 6-21; col. 62, lines 31-50), and
 - a stage of sending complementary digital information to the user during viewing of the modified main stream sent to the user on the material support supplied by the distributor (see col. 26, lines 10-43, use of clearinghouse to control the VDE activities; col. 309, lines 1-18, routing

of information using two containers; col. 342, lines 21-35, use of two depositories).

37. While Ginter discloses a modification stage of packaging elements of content into a container (see col. 59, lines 7-67), Ginter does not explicitly disclose a modification stage producing a modified main stream in a nominal format of a selected original video sequence, but whose content was modified by cutting into two parts, a larger part of which is recorded in the modified main stream that cannot be used on standard reading equipment, and a smaller part that is retained in the server within complementary digital information personalized for each user and complementary to the modified main stream.

38. However, Dawson discloses a modification stage producing a modified main stream in a nominal format of a selected original video sequence, but whose content was modified by cutting into two parts, a larger part of which is recorded in the modified main stream that cannot be used on standard reading equipment, and a smaller part that is retained in the server within complementary digital information personalized for each user and complementary to the modified main stream (see Fig 6A, stream split into two part, marred content and extracted video).

39. Ginter and Dawson are analogous art since they are from the same field of endeavor of protecting/controlling content usage. It would have been obvious to one of ordinary skill in the art to combine the teachings. The motivation for doing so would have been to allow flexible and additional layer of protecting the content usage.

40. Ginter further discloses a video server comprising a video bank and at least one piece of distribution equipment comprising a DVD burner and a printer (see Fig. 2; col. 2, lines 19-32; col. 6, lines 55-63, col. 22, lines 26-55; Fig. 7 - Fig. 10) .

41. As per claim 22 and 23, Ginter discloses wherein the transmission stage of the modified main stream further comprises a stage of storing digital information that identifies the distributor, wherein the modified main stream contains digital information identifying the distributor (see col./line 37/15-38/35, watermarking; col. 304, lines 17-19).

42. As per claim 24. The process according to claim 21, wherein the support is a DVD disk (see col. 3, lines 18-29; col. 4, lines 14-18).

43. As per claim 25. The process according to claim 21, further comprising a stage of reading the support with an apparatus comprising a user identifier (see col. 42, lines 35-40; col. 43, lines 10-14; col. 45, lines 57-62).

44. As per claim 26. The process according to claim 21, wherein the selection stage is realized by the user from a personal terminal of the user communicating with the video server by a public telecommunication network (see Fig. 1 and Fig 3).

45. As per claim 27. The process according to claim 21, wherein the stage of recording the modified main stream at the distribution site is conditioned by transmission by the user of identifying information (see above limitation on claim 21, user selection necessarily anticipates this limitation, col. 177, lines 49-67).

46. As per claim 28, Ginter discloses wherein the stage for modifying the original video sequence corresponds to a processing specific to the distributor designated by the user during the selection stage (see above limitation on claim 21 and claim 23).

47. As per claim 29. The process according to claim 28, wherein the server is connected to a database in which each specific processing is associated with an identifier of the distributor to which a resulting modified main stream is transmitted (see col. 8, lines 1-7; col. 9, lines 24-28; col. 12, lines 11-13; col. 63, lines 27-54).

48. As per claim 30 and 43, Ginter discloses use of physical support, i.e. disk, in distributing content (see col. 3, lines 21-25). Dawson discloses sending of complementary digital information as viewing of the video stream progresses, which portion of complementary digital information is stored temporarily in an input memory that is a volatile memory (see col. 2, lines 42-50, reconstruction of the original video).

49. As per claim 32, Ginter discloses wherein the stage of modifying the original video sequence corresponds to a processing specific for each user identified during the

selection stage (see limitations in claim 21, user selecting necessarily anticipates this limitation).

50. As per claim 33 Ginter discloses wherein the server is connected to a database in which each specific processing is associated with a user (see col. 8, lines 1-7; col. 9, lines 24-28; col. 12, lines 11-13; col. 63, lines 27-54).

51. As per claims 44, as Ginter discloses distribution of electronic content and hence teaches storing of content at the distribution site for distribution

Conclusion

52. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

53. Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN KIM whose telephone number is (571)270-5287. The examiner can normally be reached on Monday - Thursday (7:30AM - 5:00PM).

54. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvin Hewitt can be reached on (571)272-6709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

55. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. K./
Examiner, Art Unit 3685

/Calvin L Hewitt II/
Supervisory Patent Examiner, Art Unit 3685